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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-54

THOMAS A. DONELON, ET AL., *Petitioners,*

v.

NEW ORLEANS TERMINAL COMPANY, ET AL., *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR THE RESPONDENT NEW ORLEANS TERMINAL COMPANY IN OPPOSITION

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OPINIONS BELOW

The opinion of the Court of Appeals is reported at 474 F.2d 1108 and is reprinted at pages 22-36 of the petition. This District Court wrote no opinion.

JURISDICTION

The judgment of the Court of Appeals was entered on March 12, 1973. A petition for rehearing was denied on April 4, 1973. The petition for a writ of certiorari was filed on July 3, 1973. The jurisdiction of this Court is sought to be invoked under 28 U.S.C. Secs. 1254 and 1651.

QUESTIONS PRESENTED

1. Whether the Federal Railroad Safety Act of 1970 (45 U.S.C. Secs. 421-441) permits the Parish of Jefferson, Louisiana, to prescribe, establish and enforce standards of maintenance of respondent's interstate tracks and facilities in that Parish.

2. Whether the Federal District Court, having entered a final judgment that the Parish and its officials had no jurisdiction to prescribe such standards of maintenance, had jurisdiction under the Federal Anti-Injunction Statute (28 U.S.C. Sec. 2283) to effectuate its judgment by enjoining further action in a state court proceeding seeking to enforce the Parish action.

STATEMENT

The present proceeding arises out of the efforts of petitioners, councilmen and the Director of Safety of the Parish of Jefferson, Louisiana, by bringing actions in two courts—the Louisiana Twenty-Fourth Judicial District Court and the United States District Court for the Eastern District of Louisiana—to obtain injunctive relief against alleged unsafe conditions on respondent railroad, an interstate carrier.

Petitioners filed first in the state court, on October 27, 1970, seeking injunctive relief requiring "proper repair and maintenance" of respondent's tracks and roadbeds, and enjoining their use until that was done (J.A. 18-33). Following an unsuccessful attempt to remove the action to the Federal Court (J.A. 35-42), respondent on February 19, 1971, filed exceptions to the state court proceeding asserting that Federal jurisdiction was exclusive.

Meanwhile, other events were taking place. In January 1971 respondent petitioned the Department of Transportation to conduct an investigation into the conditions of respondent's tracks, roadbed and other facilities in Jefferson Parish pursuant to the Federal Railroad Safety Act of 1970 (Act of October 16, 1970, P.L. 91-458, 45 U.S.C. Secs. 421 *et seq.*) (J.A. 42-47). Although petitioners objected (J.A. 48-49), the investigation was had, and on March 16, 1971, the Federal Railroad Administrator, after setting forth detailed findings, concluded that respondent's tracks, roadbed and facilities were in safe and suitable condition (J.A. 7-17).

Petitioners thereupon invoked the jurisdiction of the United States District Court in a petition filed on April 2, 1971 in that court, captioned "Petition for Review of an Order of an Administrative Agency of the United States." The petition, however, named respondent as a defendant as well as the Federal Railroad Administration, and sought a determination, on various grounds, that the March 16, 1971 report was null and void (J.A. 1-7). Respondent answered and also counterclaimed for a declaratory judgment that (1) the report was valid and binding, and (2) that petitioners had no jurisdiction to prescribe or enforce rules and regulations relating to safety of operation of a railroad operating in interstate commerce (J.A. 51-65).

On November 5, 1971, respondent filed a motion for a partial summary judgment on its counterclaim asking a judgment that petitioners were without jurisdiction to prescribe or enforce railroad safety standards, that jurisdiction having been pre-empted by Federal law, the Federal Railroad Safety Act of 1970 (J.A.

75-76). A similar motion was filed by the Federal Railroad Administration on December 7, 1971 (J.A. 114-115). The motions were granted on December 15, 1971 (J.A. 142).

Thereafter, when the state court set a hearing date on petitioners' action for an injunction (J.A. 164-165), respondent sought a preliminary injunction against petitioners from proceeding with the state court action. The District Court, on respondent's motion (J.A. 172), certified the partial summary judgment as final under Rule 54(b), Federal Rules of Civil Procedure, and on respondent's further motion (J.A. 159-163) granted an injunction restraining petitioners from taking any further steps against the respondent other than by continuing its suit in the United States District Court for judicial review of the March 16, 1971 report (J.A. 177-178). A final judgment was entered pursuant thereto on January 27, 1972 (J.A. 178-179).

The court below affirmed the action of the District Court. It held, first, that the partial summary judgment was properly granted—that "a federal regulatory scheme has pre-empted the field of railroad safety to the exclusion of whatever interest in regulating railroad safety these individuals might otherwise have had outside the [Federal Railroad Safety] Act." The court further concluded that it was unnecessary to determine whether petitioners' action falls within one of the exceptions to national uniformity mandated by the Act since the exceptions related only to *state,* not to parish, action. The court held, second, that the injunction issued against petitioners was proper under 28 U.S.C. 2283 as "in aid of the [District] court's jurisdiction" and "needed to protect or effectuate its judgments."

REASONS FOR DENYING THE WRIT

I

Petitioners' objection to the partial summary judgment granted by the District Court and affirmed by the court below is not to the Federal pre-emption of the field covered by the Federal Railroad Safety Act, which created a comprehensive statutory scheme for the regulation of matters concerning railroad safety, and pursuant to which the Federal Railroad Administration issued comprehensive Federal Track Safety Standards. 49 C.F.R. 213.1-213.241 (1971) (J.A. 103-112). *Cf. Napier* v. *Atlantic Coast Line R.R. Co.*, 272 U.S. 605. Rather, they challenge (Pet. p. 15) the conclusion of the court below that the exceptions contained in the Act for "State" regulations do not permit parish regulation. Unlike the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. Sec. 1672(b)), which provides somewhat similar exemptions for "any state agency," and as to which the court below reserved judgment on the question whether a "reasonable" parish regulation would be permissible (*United Gas Pipeline Co.* v. *Terrebonne Parish Police Jury*, 319 F. Supp. 1138 (E.D. La. 1970), *aff'd, per curiam*, 445 F.2d 301 (1971)), the Federal Railroad Safety Act speaks only of "State" regulation. Section 205 of the Act (45 U.S.C. Sec. 434) reads:

> "The Congress declares that laws, rules, regulations, orders, and standards relating to railroad safety shall be nationally uniform to the extent practicable. A State may adopt or continue in force any law, rule, regulation, order, or standard relating to railroad safety until such time as the Secretary has adopted a rule, regulation, order, or standard covering the subject matter of such State requirement. A State may adopt or continue in

> force an additional or more stringent law, rule, regulation, order, or standard relating to railroad safety when necessary to eliminate or reduce an essentially local safety hazard, and when not incompatible with any Federal law, rule, regulation, order, or standard, and when not creating an undue burden on interstate commerce."

That "State" means "State," and does not contemplate a variety and multitude of local safety regulations by state subdivisions is even more apparent in the explanation of Section 205. The House Committee Report[1] states at page 19:

> "Section 205 of the bill declares that it is the policy of Congress that rail safety regulations be nationally uniform to the extent practicable. It provides, however, that until the Secretary acts with respect to a particular subject matter, a State may continue to regulate in that area. Once the Secretary has prescribed a uniform national standard the State would no longer have authority to establish Statewide standards with respect to rail safety. The State may, however, adopt or continue in force an additional or more stringent requirement when necessary to eliminate or reduce an essentially local safety hazard, provided it is not incompatible with Federal requirements and does not create an undue burden on interstate commerce.
>
> "The purpose of this latter provision is to enable the States to respond to local situations not capable of being adequately encompassed within uniform national standards. The States will retain authority to regulate individual local problems where necessary to eliminate or reduce essentially local railroad safety hazards. . .".

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[1] Report of the Committee on Interstate and Foreign Commerce, H. Rep. No. 91-1194, 91st Cong., 2d Sess. (1970).

The State of Louisiana has not acted through either the Legislature or the Louisiana Public Service Commission to adopt any statute, regulation or order governing the construction, maintenance, repair and inspection of interstate railroad tracks and facilities within that State. In correspondence with the Federal Railroad Administration, the State, acting through the Louisiana Public Service Commission, has declined to participate in the federal program of surveillance and investigatory activities now being established pursuant to the applicable provisions of the Federal Railroad Safety Act of 1970. See letter, Louisiana Public Service Commission to Federal Railroad Administration, dated June 21, 1971 (J.A. 120).

II

Petitioners' objections to the injunction reduces to the novel argument that the Federal court was without power under the Federal Anti-Injunction Statute (28 U.S.C. § 2283) to protect its jurisdiction and to protect and effectuate its judgment until the time to appeal from that judgment had expired (Pet. p. 16). The court below did not agree, holding, properly and consistently with an earlier decision by the same court that since the Federal judgment was *res judicata* of the issue, it was proper for the District Court to issue the stay necessary to effectuate it. *Woods Exploration & Prod. Co.* v. *Aluminum Co. of America,* 438 F.2d 1286 (1971). In that case the court below stated, correctly, that "the present anti-injunction statute permits a federal court to "enjoin the relitigation of cases and controversies which have been fully adjudicated' in such court in order 'to protect or effectuate its judgment.'" 438 F.2d at p. 1311. *Mitchum* v.

Foster, 407 U.S. 225, 235-236 (1972). The decision below, to the same effect, was clearly correct.

III

Petitioners cite no conflict of decisions with that of the court below. The issues are not of general importance. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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